

Nirman Singh Vs. Commissioner, Meerut Division and anr.

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Court : Allahabad

Decided On : Jun-26-1995

Reported in : 1996CriLJ1473

Judge : G.P. Mathur, J.

Acts : [Arms Act, 1959](#) - Sections 18(2), 18(7), 21, 21(2) and 32; Arms Rules, 1962 - Rules 4 and 55; [Limitation Act, 1963](#) - Sections 5

Appeal No. : Civil Misc. Writ. Petn. No. 10605 of 1994

Appellant : Nirman Singh

Respondent : Commissioner, Meerut Division and anr.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Raj Singh, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

G.P. Mathur, J.

1. This petition has been filed for quashing of the order dated 11-1-1994 and 22-2-1994 passed by the Commissioner, Meerut dismissing the appeal preferred by the

petitioner against the order dated 15-10-1993 of the District Magistrate cancelling his fire arm licence. The learned Standing Counsel was granted one month's time on 23-3-1994 to file counter affidavit but no such affidavit has been filed. In view of the fact that nearly one year has elapsed, I do not consider it proper to grant any further time for filing counter affidavit and the writ petition is being disposed of finally at the admission stage.

2. A notice was issued to the petitioner to show cause why his fire arm licence be not cancelled. The petitioner gave reply to the aforesaid show cause notice and after considering the entire material, the District Magistrate, Bullandshahr by his order dated 15-10-1993 cancelled the fire arm licence granted to him. Against the order dated 15-10-1993 the petitioner preferred an appeal on 7-1-1994 without any application under Section 5 of the Limitation Act and without showing any cause for condonation of delay. It may be noticed that Sub-section (2) of Section 18 of the Arms Act provides that no appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor. The proviso to this Sub-section lays down that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period. Rule 55(b) of the Arms Rules lays down that the limitation for filing the appeal is 30 days. It is obvious that the petitioner did not prefer the appeal within the prescribed period of limitation i.e. within 30 days, as the order of the District Magistrate was passed on 15-10-1993 and the appeal had been preferred on 7-1-1994 i.e. after 83 days. The period spent in obtaining the certified copy of the order was only 5 days. The petitioner did not give any explanation whatsoever nor moved any application for condoning the delay in filing the appeal. In these circumstances, the Commissioner had no option but to dismiss the appeal. Thus there is no illegality in the impugned order dated 11-1-1994.

3. Subsequent to the dismissal of the appeal, the petitioner preferred another appeal along with an application under Section 5 of the limitation Act on 14-1-1994 which was registered as Appeal No. 8 of 1994. This appeal was dismissed as not maintainable by the order dated 22-2-1994. Sub-section (7) of Section 18 of the Arms Act provides that every order of the appellate authority confirming, modifying

or reversing the order appealed against shall be final. In view of this provision, earlier order dated 11-1-1994 dismissing the appeal became final and the second appeal preferred by the petitioner was not maintainable. The order dated 22-2-1994 passed in appeal No. 8 of 1994 is therefore perfectly correct and calls for no interference.

4. In the writ petition, the prayer is for quashing the orders dated 11-1-1994 and 22-2-1994 passed by the Commissioner, Meerut. No prayer has been made for quashing the order dated 15-10-1993 passed by the District Magistrate, Bullandshahr. However, I find that while revoking the fire arm licence of the petitioner, District Magistrate also directed for confiscation of the S.B.B.L. Gun No. 3330 and Rifle No. 880015 A. B. belonging to the petitioner. In my opinion the order for confiscation of the fire arms of the petitioner cannot be justified in law. The provision for confiscation of the fire arm is made in Section 32 of the Act and this power can be exercised only when a person is convicted under the Act of an offence committed by him in respect of any arms or ammunition and such a power can only be exercised by the convicting Court. The petitioner has not been prosecuted or convicted under the provisions of the Arms Act nor the District Magistrate while hearing proceedings for cancellation of fire arm licence acts as a Court. In these circumstances, the provisions of Section 32 of the Act have no application and the order for confiscation of the fire arm is illegal and without jurisdiction.

5. The petitioner has not filed copy of his fire arm licence along with the writ petition to ascertain the authority who had granted the licence and the territory for which the said licence was valid. The order passed by the respondent No. 2 shows that the licence was granted in District Gurgaon in the State of Haryana. The licence granted by a District Magistrate of a District in the State of Haryana cannot be valid in the State of U. P. in view of Rule 4 and the Schedule to Arms Rules. I have come across cases wherein the licence granted by the District Magistrate a note is made that it is valid for all India I have considered this question in detail in writ petition No. 33288 of 1994 (Prevesh Kumar v. D. M.) decided on 18-1-95 and have held that a fire arm licence granted by a District Magistrate can at best be valid within the territorial jurisdiction of that State and not outside the State. A

District Magistrate has no authority to grant a licence which may be valid for the whole country.

6. Section 21 of the Act provides that if the fire arm licence is revoked, the person concerned shall be entitled to dispose of the fire arm and to receive the proceeds of such disposal. Since the fire arm licence of the petitioner has been revoked, he will be entitled to move an application under Section 21(2) of the Act to the District Magistrate for disposal of his fire arm. If such an application is moved by the petitioner, the same shall be considered by the District Magistrate in accordance with law.

7. Subject to the observation made above, the writ petition is dismissed.

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